

No. 11978.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

WILLIAM D. NOLAND, Trustee, and WILLIAM D. NOLAND,
Personal,

Appellant,

vs.

HARRY C. WESTOVER, Collector, United States Treasury
Department, Internal Revenue Service, Sixth Collection
District of California, Los Angeles Division, *et al.*,

Appellees.

Appeal From the District Court of the United States
for the Southern District of California.

BRIEF FOR THE APPELLEES.

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Assistant Attorney General.

ELLIS N. SLACK,

ROBERT N. ANDERSON,

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Special Assistants to the Attorney General.

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Special Attorney, Bureau of Internal Revenue.

FILED

NOV 16 1948

PAUL P. O'BRIEN, -
CLERK

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Department, Internal Revenue Service, Sixth Collection
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Appellees.

Appeal From the District Court of the United States
for the Southern District of California.

BRIEF FOR THE APPELLEES.

Opinion Below.

The District Court wrote no opinion.

Jurisdiction.

This is an appeal by the plaintiff-appellant from a judgment of the United States District Court for the Southern District of California awarding summary judgment to the defendant-appellees. The second amended complaint involved federal income taxes paid and due for the years from 1937 through 1947. [R. 13-34.] The Prayer for judgment requested only declaratory relief. [R. 33-34.] The courts of the United States have no

jurisdiction to grant declaratory judgments with respect to federal taxes. 28 U. S. C., Sec. 2201 [Appendix A, *infra*]. It is believed that the District Court had no jurisdiction. In so far as there may be read into the complaint a request for injunction, the District Court had no jurisdiction over this action either. Internal Revenue Code, Section 3653(a) [Appendix A, *infra*]. And in so far as the complaint may be construed to be an action for refund of taxes paid, no claims for refund were alleged to have been filed by the appellant with the Commissioner of Internal Revenue according to the provisions of law in that regard, which claims are required before a suit may be maintained in any court for the recovery of any internal revenue taxes. Internal Revenue Code, Sections 322(b) and 3772(a)(1) [Appendix A, *infra*]. The judgment of the District Court was entered April 21, 1948. [R. 81-85.]

Notice of appeal was filed May 4, 1948. [R. 91-92.] The jurisdiction of this Court is conferred by 28 U. S. C., Sec. 1291.

Questions Presented.

1. Did the District Court have jurisdiction over an action for declaratory relief or for an injunction?
2. Did the District Court properly dismiss the complaint where, even if it could be construed as an action for refund of taxes paid, no proper claims for refund were filed by the appellant within the period required by law?
3. May a suit for refund of taxes paid be maintained against those appellees who did not receive the money?

4. Were the income taxes properly demanded from the appellant where the income of a trust which he set up could be used for his personal living expenses?

5. Is the action *res judicata* with respect to the revenue agents?

Statutes Involved.

These will be found in Appendix A, *infra*.

Statement.

On April 19, 1948, there was filed in the United States District Court for the Southern District of California, a second amended complaint¹ in this case in the names of William D. Noland, personally, and William D. Noland, trustee, representing his interest as such trustee in the Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate. [R. 13, 34.] The defendants were Harry C. Westover, Collector of Internal Revenue, George D. Martin, Internal Revenue Agent in Charge of the Los Angeles Division, and Norman Hayward, Raymond B. Sullivan and John H. Cramer, Internal Revenue Agents. [R. 14-15.]

It was alleged that on about June 6, 1942, Hayward demanded from Noland and examined the books and records of the Dr. William D. Noland Trust Estate, Ltd., for the purpose of making a report thereon. [R. 16.] It was then claimed that Hayward "with malice aforethought through and by fraud, fraudulently confiscated, assets, funds and property" belonging to the trust estate from the trustees' books and records and fraudulently

¹This will hereinafter be referred to as the complaint.

transferred them in a schedule to the personal account of William D. Noland for the years 1937, 1938, 1939, 1940, and 1941. [R. 16-17.] Thereafter, according to the complaint, Hayward demanded additional income taxes from Noland and accepted the sum of \$80.45 in payment of the additional taxes, giving Noland a receipt for it. [R. 17-18.]

The complaint also alleged that Revenue Agent in Charge Martin and Revenue Agent Cramer sent a letter dated January 26, 1945, to the Dr. William D. Noland Trust Estate, Ltd., together with a statement showing that property belonging to the trust estate was "fraudulently confiscated and assigned, transferred and delivered to the account of William D. Noland personally," and claimed additional personal income tax of \$656.75 for 1942. [R. 19.] The same letter also contained a notification of additional income tax and penalty due from Noland for 1943 in the sum of \$1,114.86. [R. 19-20.] And after numerous hearings, on or about December 29, 1945, the Commissioner sent the taxpayer, Noland, a notice of tax deficiency in the sum of \$1,245.13 plus a penalty of \$62.26 for the year 1943. [R. 20-21.]

The complaint alleged that the trust estate was conducted and operated as a benevolent charitable organization. [R. 22.] It was stated that contracts had been entered into among three trustees and also between the trustees and William D. Noland as a Doctor of Chiropractic, wherein Noland gave his services without any salary, wages, or profit, for the benefit of poor people. [R. 22.]

According to the complaint the Revenue Agents claimed that under Section 167 of the Internal Revenue Code,

Noland was personally taxable on the entire income of the trust. [R. 23.] But the complainant contended that Section 167 is not applicable because the trust estate is a charitable institution and the beneficiaries, trustee and trustor are not the same. [R. 24.]

The complaint also alleged that the trustees of the Noland Trust Estate paid in error \$35.64 in income taxes for the year 1942 and \$183.36 in income taxes for the year 1945 and that such sums were not due. [R. 26.]

It was also stated that claims were filed with the Internal Revenue Service for the \$35.64 and for \$80.45 on or about March 15, 1946, and the claims have not been affirmed or denied by the Internal Revenue Service. [R. 27.]

It was averred that Noland is not paid salary, wages, or profits by the trust estate but that "his personal living expenses are paid from the funds of the said benevolent trust estate as benevolent trust expense." [R. 27.]

A previous action for damages was brought against the revenue agents. But while it was pending, on December 11, 1946, the trustees of the trust estate received another notice for additional income taxes, penalty and interest due in the sum of \$1,509.48 for 1943, and on March 28, 1947, they received a notice of balance due for 1942 in the sum of \$19.85. [R. 27-28.] On June 29, 1947, complainants received a further notice of additional income taxes, penalty and interest for the year 1943 in the sum of \$1,561.20. It was asserted that the complainant does not owe such taxes. [R. 29.]

The complaint prayed for judgment (1) that Section 167 of the Internal Revenue Code does not apply to the

trust estate nor to Noland; (2) that neither Noland nor the trust estate has to file any income tax returns nor does either owe any income taxes of any kind whatsoever; (3) that the contract between the trust estate and Noland for the latter to give his services without pay is valid and therefore he does not owe any income taxes from salary, wages, or profits; (4) that the trust estate is a charitable organization; (5) that Sections 23(a)(1) and (o)(2) and 120 of the Internal Revenue Code and not Section 167 of the Code apply to the complainants. It also asked for such other relief as the court might deem proper. [R. 33-34.]

A copy of the trust agreement referred to in the complaint was attached as an exhibit to the complaint. [R. 36-48.] The agreement recited that William D. Noland conveyed certain described personal property to William D. Noland, Peggy A. Archer and Audney E. Spillman as trustees of the Dr. William D. Noland Trust Estate, Ltd. [R. 36-40.] The trustees were given authority to conduct any and all kinds of business. [R. 40.] They were authorized to do "any and all things that will be benevolent to poor children, women and men, or organizations who are worthy of benevolent assistance from this estate in the discretion and judgment of the Trustees." [R. 41.] They were authorized to "execute a dissolution at any time." [R. 42.] They might "at any time in their discretion and judgment, pay any and all expenses incurred and accrued in the operation and administration of this estate, from any available resources or funds of this estate." [R. 44.] The purpose of the trust was that of "advancing the welfare and progress of this organization on the interests of this estate, its Trustees,

its Members, also advancing in a scientific manner for the benefit of humanity.” [R. 45.] And no one was given the right “in any manner to embarrass or question the rights of the Trustees to exclusively manage, control, administer, and hold legal title to the trust estate properties and funds of this estate.” [R. 46.]

The defendants each moved for summary judgment. [R. 58, 63.] The motion by the Collector, Harry C. Westover, was supported by his affidavit which stated that he was not in office prior to July 1, 1943, and that he did not collect or receive any taxes or other funds from the complainants or any of them. [R. 62.] The motion of the other appellees, the four revenue agents, was also supported by affidavits. Revenue Agents Martin, Sullivan and Cramer swore that they had never received or collected any taxes or other funds from the complainants or any of them. [R. 73-76.] Revenue Agent Hayward stated in his affidavit that as an accommodation to the appellant, Noland, he delivered, in July, 1942, to the then Collector of Internal Revenue the \$80.45 due from Noland as income taxes for the year 1937 and that he then turned over the Collector’s receipt for the \$80.45 to Noland; and at no time did he collect any other taxes or funds from Noland. [R. 77-78.]

The motions for summary judgment were also supported by the complaint and judgment of dismissal in the earlier action in the same court entitled William D. Noland, H. K. Miller and Harry R. Maxwell, Trustees, Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, and William D. Noland, Complainants v. George D. Martin, Norman Hayward, Joseph D. Nunan, Jr., Raymond B. Sullivan and John H. Cramer, Civil Action No.

5716-W. [R. 10-13, 63-68, 98-120.] The complaint in the earlier action (filed August 27, 1946) showed that the allegations in the instant complaint pertaining to the appellees Martin, Hayward, Sullivan and Cramer were essentially the same as those in the earlier action, and the prayer for judgment in the instant case was substantially the same as part of the relief requested in the earlier action. [R. 13-34, 98-115.] The judgment in the earlier action [R. 117-120], dated January 9, 1947, showed that the District Court had dismissed that action against the four named appellees in part on the ground that "the Complaint herein fails to state a claim upon which relief as prayed for in the Complaint or any other relief can be granted against said four defendants or any of them." [R. 119.]

Summary of Argument.

The complaint requested merely declaratory relief. Federal courts have no jurisdiction to grant declaratory judgments in federal tax matters. Even if the action were considered as one seeking an injunction, the federal courts would have no jurisdiction to enjoin collection of federal taxes. Nor would the complaint be sufficient as an action for refund of taxes, since (1) the appellant filed no refund claims within the period required by law; (2) the only claims filed were by a trust which is not the appellant herein; (3) the appellees here sued did not collect the taxes in question, and (4) the complaint shows no reason why the taxes were not properly collected. Mere allegations of malice on the part of the internal revenue agents could not create a claim. And in any event, the action with respect to the revenue agents is *res judicata* because of the previous action.

ARGUMENT.

I.

The District Court Was Without Jurisdiction Over an Action for Declaratory Judgment With Respect to Federal Taxes.

Since the complaint was drawn by a layman we do not insist that its sufficiency be tested by the technical standards expected of a lawyer. Nevertheless, the District Court was correct in granting the appellees' motions for summary judgment.

The only relief specifically requested in the complaint is of a declaratory nature. [R. 33-34.] The law provides, however, that the courts of the United States have no jurisdiction to grant declaratory judgments with respect to federal taxes. 28 U. S. C., Sec. 2201 [Appendix A, *infra*]. (*Red Star Yeast & Products Co. v. La Budde*, 83 F. 2d 394 (C. C. A. 7th); *Wilson v. Wilson*, 141 F. 2d 599 (C. C. A. 4th).)

II.

The District Court Was Without Jurisdiction Over an Action to Enjoin Collection of Federal Taxes.

Construing the action as one for injunction relief because of the request for such other "relief as the court might deem proper" [R. 34], the action was nevertheless properly dismissed because the law provides that no suit for the purpose of restraining the assessment or collection of any federal tax shall be maintained in any court. Internal Revenue Code, Section 3653(a) [Appendix A, *infra*]. (*Wilson v. Wilson*, *supra*; *Adler v. Nicholas*, 166 F. 2d 674 (C. C. A. 10th).)

III.

The District Court Properly Denied Refund of Any Taxes Paid.

Although the prayer for judgment requests no money judgment, even if we construe the request for such other "relief as the court might deem proper" [R. 34] as broad enough to include an action for refund of taxes paid, the District Court still properly dismissed the action.

Section 3772(a) of the Internal Revenue Code [Appendix A, *infra*] provides that no suit shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected until a claim for refund has been duly filed with the Commissioner of Internal Revenue according to the provisions of law in that regard. In the case of income taxes, Section 322(b)(1) of the Internal Revenue Code [Appendix A, *infra*] provides that a claim for refund must be filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, or no refund shall be allowed. The only refund claims alleged by the complaint to have been filed were for \$35.64 and \$80.45, both on March 15, 1946. [R. 27.] Both claims were in the name of the Dr. William D. Noland Trust Estate, by William D. Noland, Trustee.² The \$80.45 claim for refund of 1937 taxes showed on its face that the taxes had been paid on July 6, 1942. The \$35.64

²The claims for refund, though designated as Exhibit I to the complaint, were apparently inadvertently omitted from the printed record before this Court. A motion has been filed by the appellees to have them included in the record and they are set forth in Appendix B to this brief.

claim for refund of 1942 taxes showed that the taxes had been paid "on or before March 15, 1943." Thus there was no showing that the claims had been filed within the three-year period after the filing of the returns for those years or within two years from the time the taxes were paid. Moreover, neither claim stated the grounds alleged in the complaint upon which the trust should receive refund of taxes, a requisite for recovery in an action for tax refund. (Treasury Regulations 111, Section 29.322-3; *Angelus Milling Co. v. Commissioner*, 325 U. S. 293; *Real Estate Land Title Co. v. United States*, 309 U. S. 13; *Bemis Bro. Bag Co. v. United States*, 289 U. S. 288.)

No recovery could of course be had by Noland for any taxes imposed upon him in his individual capacity because he filed no claims for refund. Section 322 of the Internal Revenue Code requires that the taxpayer file the claim. Nor, if the trust paid the taxes and filed the claim, could Noland sue as trustee, "representing his interest as such trustee" [R. 13], since the trust and not he was the taxpayer, and for valid trust action the three trustees were required to act collectively. [R. 37.] See, also, California Civil Code (1937), Section 2268.

Apart from the sufficiency of the two refund claims, no recovery of taxes paid could be had against any of the appellees because none of them received either Noland's or the trust's money. Westover, the Collector, was not yet in office when both the \$80.45 and the \$35.64 were paid. [R. 62, Appendix B, *infra*.] Thus there was no cause of action against him. (*Smietanka v. Indiana Steel*

Co., 257 U. S. 1; *United States v. Kales*, 314 U. S. 186, 199-200.) Revenue Agent Hayward turned over the \$80.45 to the then Collector in July, 1942, acting as agent for Noland. [R. 76-78.] None of the other appellees received any money from either Noland or the trust, nor were they alleged to have done so. [R. 73-76.]

Furthermore, under any view of the nature of the action, on its face the complaint shows that the assessment of income taxes to William D. Noland, the settlor of the trust, with respect to the trust income was proper. The trustees had complete discretion with respect to management, control and expenses of the trust. [R. 44-46.] Included in the trust expenses was Noland's personal living expenses. [R. 27.] Under Section 167(a) and (b) of the Internal Revenue Code [Appendix A, *infra*], he was therefore taxable on the entire income of the trust. (*Helvering v. Stuart*, 317 U. S. 154; *Williamson v. Commissioner*, 132 F. 2d 489 (C. C. A. 7th).)

IV.

Malice by Government Officers in Performing Their Duties Does Not Create a Cause of Action.

The complaint showed no acts by the appellees which could conceivably be wrongful. The allegations with respect to the motives of the defendants and their malice and fraud in performing their duties do not create a cause of action against them since the acts complained of were within the general scope of their duties. (*Spalding v. Vilas*, 161 U. S. 483; *Cooper v. O'Connor*, 99 F. 2d 135 (App. D. C.), certiorari denied, 305 U. S. 643; *Laughlin v. Rosenman*, 163 F. 2d 838 (App. D. C.).)

V.

The Claim Against the Revenue Agents is Res
Judicata.

In addition to all of the foregoing, with insubstantial variation the allegations made against the appellees other than the Collector Westover were made in an earlier action against them brought in the same District Court by the appellant Noland acting in the same dual capacity. And similar relief was asked. The complaint was dismissed on the ground, among others, that it failed to state a claim upon which any kind of relief could be granted. [R. 10-13, 98-120.] As to the appellees, Martin, Hayward, Sullivan and Cramer, therefore, the action is barred as *res judicata*. (*Commissioner v. Sunnen*, 333 U. S. 591.)

Conclusion.

The judgment of the District Court dismissing the complaint and awarding judgment to the appellees should be affirmed.

Respectfully submitted,

THERON LAMAR CAUDLE,
Assistant Attorney General,

ELLIS N. SLACK,
ROBERT N. ANDERSON,
PHILIP R. MILLER,

Special Assistants to the Attorney General.

JAMES M. CARTER,
United States Attorney,

E. H. MITCHELL,
Asst. U. S. Attorney,

EUGENE HARPOLE,
Special Attorney,
Bureau of Internal Revenue.

November 17, 1948.

APPENDIX "A."

Internal Revenue Code:

SEC. 167.³ INCOME FOR BENEFIT OF GRANTOR.

(a) Where any part of the income of a trust—

(1) Is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; * * *

* * * * *

then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

* * * * *

(26 U. S. C. 1946 ed., Sec. 167.)

³Section 167 of the Revenue Act of 1936, Chap. 690, 49 Stat. 1648, and of 1938, Chap. 289, 52 Stat. 447, contains similar language.

SEC. 322. REFUNDS AND CREDITS.

* * * * *

(b) Limitation on Allowance.—

(1) Period of limitation.—Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time that tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

* * * * *

(26 U. S. C. 1946 ed., Sec. 322.)

SEC. 3653. PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) Tax.—Except as provided in sections 272(a), 871(a) and 1012(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

* * * * *

(26 U. S. C. 1946 ed., Sec. 3653.)

SEC. 3772. SUITS FOR REFUND.

(a) Limitations.—

(1) Claim.—No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

* * * * *

(26 U. S. C. 1946 ed., Sec. 3772.)

28 U. S. C.:

SEC. 2201.—CREATION OF REMEDY.

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

APPENDIX "B."

EXHIBIT I.

William D. Noland, Trustee
Dr. William D. Noland Trust Estate, Ltd.,
A Benevolent Trust Estate,
In Propria Persona
2030 Wilshire Blvd., Suite 201-205
Los Angeles 5, Calif.

William D. Noland, Personal,
In Propria Persona,
Same address as above.
FE 9332.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

William D. Noland, Trustee, Dr. William D. Noland Trust Estate, Ltd., a Benevolent Trust Estate, and William D. Noland, Personal, Complainants, vs. Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, *et al.*, etc. Defendants. Civil Action No. 7315-O'C.

AFFIDAVIT IN SUPPORT OF SECOND AMENDED BILL OF COMPLAINT, EXHIBIT I ATTACHED.

State of California, County of Los Angeles—ss.

William D. Noland, Trustee and William D. Noland, Personal, being first duly sworn, deposes and says:

That the attached copies of claims filed with Internal Revenue Collector are true and correct copies of the original copies of said claims and are marked "EXHIBIT I" for identification, in support of Second Amended Bill of Complaint.

WILLIAM D. NOLAND, Trustee.

William D. Noland, Trustee.

WILLIAM D. NOLAND, Personal.

William D. Noland, Personal.

Subscribed and sworn to before me on this 19th day of April, 1948.

(Seal)

RICHARD M. GOUGH,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires May 18, 1948.

Received Apr. 19, 1948. U. S. Attorney, Los Angeles, Calif.

Form 813

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
(Revised April 1940)

Claim to be filed with the Collector where Assessment was made or tax paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Collector's Stamp Date Rec'd, Mar. 15, 1946.

- Refund of Tax Illegally Collected.
- Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- Abatement of Tax Assessed (not applicable to estate or income taxes).

State of California, County of Los Angeles—ss.

Type or Print

Name of taxpayer or purchaser of stamps, Dr. William D. Noland Trust Estate, Ltd.

Business address, 3944 Wilshire Blvd., Los Angeles 6, Calif.

Residence, 3944 Wilshire Blvd., Los Angeles 6, Calif.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed, Los Angeles, Calif.

2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1937, to Dec. 31, 1937.

3. Character of assessment or tax, Income Tax.

4. Amount of assessment, \$80.45; dates of payment July 6th, 1942 (see note attached).

5. Date stamps were purchased from the Government

6. Amount to be refunded, \$80.45 \$80.45

7. Amount to be abated (not applicable to income or estate taxes)

8. The time within which this claim may be legally filed expires, under Section of the Revenue Act of 19....., on March 15, 1946.

The deponent, verily believes that this claim should be allowed for the following reasons:

Excerpt from letter dated, January 3, 1946, to Dr. William D. Noland, Trust Estate, Ltd., from Internal Revenue Agent in Charge, reads as follows:—"Inasmuch as there is not provision in the Internal Revenue Code whereby the amount of income tax paid by a trust may be allowed as a credit against the income tax liability of an individual it is suggested that you file appropriate claims for refund for the taxable years mentioned, within the time prescribed by law, on the enclosed Forms 843. This action should be taken in order to protect your interests in the matter in the event that a petition,

if filed, to the Tax Court of the United States results in a decision adverse to your contentions.

Very truly yours,

(See note attached) George D. Martin
Internal Revenue Agent in Charge.

(Attach letter-sized sheets if space is not sufficient)

Sworn to and subscribed before me this 14th day of March, 1946.

 EDITH W. OLMSTEAD,
(Seal) Notary Public.

(Signed): Dr. William D. Noland Trust Estate, Ltd.
By WILLIAM D. NOLAND, Trustee.
William D. Noland, Trustee.

Form 843

Treasury Department, Internal Revenue Service (Revised April, 1940).

Claim to be filed with the Collector where assessment was made or tax paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Collector's Stamp (Date Rec'd) Mar. 15, 1946.

—Refund of Tax Illegally Collected.

—Refund of Amount Paid for Stamps Unused or Used in Error or Excess.

—Abatement of Tax Assessed (not applicable to estate of income taxes).

State of California, County of Los Angeles—ss.

Type or Print

Name of Taxpayer or purchaser of stamps, Dr. William D. Noland Trust Estate, Ltd.

Business address, 3944 Wilshire Blvd., Los Angeles 5, Calif.

Residence, 3944 Wilshire Blvd., Los Angeles 5, Calif.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed, Los Angeles, California.

2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1942 to Dec. 31, 1942.

3. Character of assessment or tax, Income Tax.

4. Amount of assessment, \$35.64; dates of payment on or before March 15, 1943.

5. Date stamps were purchased from the Government

6. Amount to be refunded \$35.64 \$35.64.

7. Amount to be abated (not applicable to income or estates taxes).

8. The time within which this claim may be legally filed expires, under Section of the Revenue Act of 19...., on March 15, 1946.

The deponent verily believes that this claim should be allowed for the following reasons:

Excerpt from the letter dated, January 3, 1946, to Dr. William D. Noland Trust Estate, Ltd., from Internal Revenue Agent in Charge, reads as follows:—"Inasmuch as there is no provision in the Internal Revenue Code whereby the amount of income tax paid by a trust may be allowed as a credit against the income tax liability of an individual it is suggested that you file appropriate claims for refund for the taxable years mentioned, within the time prescribed by law, on the enclosed Forms 843. This action should be taken in order to protect your inter-

ests in the matter in the event that a petition, if filed, to the Tax Court of the United States results in a decision adverse to your contentions.

Very truly yours,

George D. Martin,
Internal Revenue Agent in Charge.

(Attach letter-size sheets if space is not sufficient)

Sworn to and subscribed before me this 14th day of March, 1946.

(Seal)

Edith W. Olmstead,
Notary Public.

(Signed): Dr. William D. Noland Trust Estate, Ltd.

By WILLIAM D. NOLAND, Trustee.

William D. Noland, Trustee.

